

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LEONARD COLLINS,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

No. 2:13-CV-00125-JTR

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are cross-Motions for Summary Judgment. ECF Nos. 15, 21. Attorney Dana C. Madsen represents Plaintiff; Special Assistant United States Attorney Diana Andsager represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 13. After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** Plaintiff's Motion for Summary Judgment and **DENIES** Defendant's Motion for Summary Judgment.

JURISDICTION

On April 26, 2010, Plaintiff filed a Title II application for a period of disability and disability insurance benefits, along with a Title XVI application for supplemental security income, both alleging disability beginning May 1, 2006. Tr. 25; 156. Plaintiff alleged he was disabled due to diabetes, COPD, pancreatitis, diabetic neuropathy, sleep apnea, gout, chronic bronchitis, asthma, arthritis, low back problems, vision issues, and carpal tunnel syndrome. Tr. 103. Plaintiff's

1 claim was denied initially and on reconsideration, and he requested a hearing
2 before an administrative law judge (ALJ). Tr. 75-81; 92-120. A hearing was held
3 on September 20, 2011, at which vocational expert Jinnie Lawson, medical expert
4 Alexander White, and Plaintiff, who was represented by counsel, testified. Tr. 41-
5 74. ALJ Marie Palachuk presided. Tr. 41. The ALJ denied benefits on October
6 12, 2011. Tr. 25-36. The instant matter is before this court pursuant to 42 U.S.C.
7 § 405(g).

8 **STATEMENT OF FACTS**

9 The facts have been presented in the administrative hearing transcript, the
10 ALJ's decision, and the briefs of the parties and, thus, they are only briefly
11 summarized here. At the time of the hearing, Plaintiff was 53 years old, five-foot
12 eleven inches tall, weighed 233 pounds, completed the tenth grade, and he later
13 obtained a GED. Tr. 51. He was divorced and lived alone. Tr. 51.

14 He worked as a dump truck driver for several companies, and he also
15 worked briefly mixing concrete, cutting steel and washing dishes. Tr. 52-53. He
16 testified that he stopped driving trucks because after he was prescribed insulin for
17 his diabetes, he was "blind" for about three weeks. Tr. 54. He said he tried to
18 drive semi-trucks, but he could not master filling out the required driving logs. Tr.
19 67.

20 Plaintiff also testified that his Type II Diabetes makes him tired and weak,
21 he has chronic foot and ankle pain, and he cannot walk far or he becomes light-
22 headed, dizzy, and sometimes nauseous. Tr. 55. He said his hands are always
23 swollen and he cannot hold a cup longer than five minutes or it will drop out of his
24 hands. Tr. 56.

25 Plaintiff also testified that he never leaves his apartment unless he has to go
26 to a doctor appointment or grocery shopping. Tr. 60. He explained that when he
27 returns with groceries, he needs help to carry the groceries up the two flights of
28 stairs to his apartment. Tr. 60. After these trips, he described his condition as

1 “totally exhausted.” Tr. 57. He said he can walk a half a block before he runs out
2 of breath. Tr. 61.

3 Plaintiff said he does very little cleaning, and it takes him three or four days
4 to clean his apartment. Tr. 63. He does laundry about once a month, and he cooks
5 mostly by using the microwave. Tr. 63.

6 STANDARD OF REVIEW

7 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the court set
8 out the standard of review:

9 A district court’s order upholding the Commissioner’s denial of
10 benefits is reviewed de novo. *Harman v. Apfel*, 211 F.3d 1172, 1174
11 (9th Cir. 2000). The decision of the Commissioner may be reversed
12 only if it is not supported by substantial evidence or if it is based on
13 legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).
14 Substantial evidence is defined as being more than a mere scintilla,
15 but less than a preponderance. *Id.* at 1098. Put another way,
16 substantial evidence is such relevant evidence as a reasonable mind
17 might accept as adequate to support a conclusion. *Richardson v.*
18 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to
19 more than one rational interpretation, the court may not substitute its
judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097;
Morgan v. Commissioner of Social Sec. Admin., 169 F.3d 595, 599
(9th Cir. 1999).

20 The ALJ is responsible for determining credibility, resolving conflicts in
21 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
22 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed *de novo*,
23 although deference is owed to a reasonable construction of the applicable statutes.
24 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

25 It is the role of the trier of fact, not this court, to resolve conflicts in
26 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one
27 rational interpretation, the court may not substitute its judgment for that of the
28 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579

(9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence exists to support the administrative findings, or if conflicting evidence exists that will support a finding of either disability or non-disability, the Commissioner's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

SEQUENTIAL PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§404.1520(a), 416.920(a); see *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one through four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-99. This burden is met once a claimant establishes that a physical or mental impairment prevents him from engaging in his previous occupation. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show that (1) the claimant can make an adjustment to other work; and (2) specific jobs exist in the national economy which claimant can perform. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-94 (2004). If a claimant cannot make an adjustment to other work in the national economy, the claimant is deemed disabled. 20 C.F.R. §§ 404.1520(a)(4)(I-v), 416.920(a)(4)(I-v).

ALJ'S FINDINGS

At step one of the sequential evaluation, the ALJ found Plaintiff has not engaged in substantial gainful activity since February 11, 2009, his alleged onset date. Tr. 27. At step two, the ALJ found Plaintiff suffered from the severe impairments of diabetes mellitus, pancreatitis secondary to diabetes mellitus,

1 sensory neuropathy secondary to diabetes mellitus, chronic obstructive pulmonary
2 disease, mild, obstructive sleep apnea, controlled with CPAP, degenerative disc
3 disease, mild and depressive disorder. Tr. 27. At step three, the ALJ found
4 Plaintiff's impairments, alone and in combination, did not meet or medically equal
5 one of the listed impairments. Tr. 28. The ALJ determined that Plaintiff had the
6 residual functional capacity ("RFC") to perform less than the full range of light
7 work:

8
9 The claimant can perform all postural movements occasionally except
10 he can never climb ladders, ropes, or scaffolds. The claimant can
11 perform manipulative movements bilaterally frequently. The claimant
12 should avoid concentrated exposure to cold and even moderate
13 exposure to vibration, respiratory irritants, and hazards. The claimant
14 is able to maintain attention and concentration for up to two-hour
15 intervals between regularly scheduled breaks. The claimant can have
16 only superficial contact with the public and/or coworkers. It would be
17 best for the claimant to deal with things rather than people.

18 Tr. 30. At step four, the ALJ found that Plaintiff is not capable of performing past
19 relevant work. Tr. 34. The ALJ determined, in light of Plaintiff's age, education,
20 work experience, and residual functional capacity, there are jobs that exist in
21 significant numbers in the national economy that the claimant can perform, such as
22 escort vehicle driver, pricer/marker and copy machine operator. Tr. 35. The ALJ
23 concluded Plaintiff was not disabled as defined by the Social Security Act. Tr. 36.

24 ISSUES

25 Plaintiff contends that the ALJ erred by rejecting the opinions of W. Scott
26 Mabee, Ph.D., and Karen Bichler, ARNP. ECF No. 15 at 12-16.¹

27 ¹In his argument that the ALJ failed to properly credit the medical opinion
28 evidence, Plaintiff mentions the opinions of Melody Bemis, ARNP, and Sydney J.
Lindgren, MS, NCC. ECF No. 15 at 13. However, Plaintiff provides no analysis

DISCUSSION

As a general rule, more weight should be given to the opinion of a treating source than to the opinion of doctors who do not treat the claimant. *Lester*, 81 F.3d at 830. Where the treating doctor's opinion is not contradicted by another doctor, it may be rejected only for "clear and convincing" reasons. *Id.* Where the treating doctor's opinion is contradicted by another doctor, the ALJ may not reject this opinion without providing "specific and legitimate reasons" supported by substantial evidence in the record. *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983). Where a medical source's opinion is based largely on the Plaintiff's own subjective description of symptoms, and the ALJ has discredited the Plaintiff's claim as to those subjective symptoms, the ALJ may reject that opinion. *Fair v. Bowen*, 885 F.2d at 605; and see *Diaz v. Sec'y of Health & Human Servs.*, 898 F.2d 774, 777 (10th Cir. 1990) (Commissioner appropriately discounted claimant's nonexertional impairment complaints due to lack of corroborative evidence and consulting physician's suspicion that claimant was malingering). When providing reasons for rejecting opinion evidence, the ALJ should provide "a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998). The ALJ must do more than merely state his conclusions: "[h]e must set forth his own interpretations and explain why they, rather than the doctors', are correct." *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)). The ALJ must explain the weight assigned to "other" sources to the extent

or argument related specifically to these providers, and thus the court does not address the ALJ's analysis of these medical opinions. See *Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (court ordinarily will not consider matters on appeal that are not specifically and distinctly argued in an appellant's opening brief).

1 that a claimant or subsequent reviewer may follow the ALJ's reasoning. SSR 06-
2 03p.

3 **A. W. Scott Mabee, Ph.D.**

4 Plaintiff contends that the ALJ failed to properly credit the opinions of W.
5 Scott Mabee, Ph.D. Specifically, Plaintiff argues that Dr. Mabee was entitled to
6 rely upon Plaintiff's subjective complaints because he performed an extensive
7 evaluation of Plaintiff that included objective testing. ECF No. 15 at 14-15.
8 Additionally, Plaintiff argues that Dr. Mabee's status as an examining physician
9 and the purpose of the evaluation are improper reasons to discount the opinion.
10 ECF No. 15 at 14-15.

11 On February 3, 2011, W. Scott Mabee, Ph.D., examined Plaintiff and
12 completed a Psychological/psychiatric evaluation. Tr. 496-510. Dr. Mabee
13 referenced Plaintiff's prior evaluation performed in May 2008 at the same clinic,
14 and indicated it was "unlikely" Plaintiff's 2008 WAIS-III test scores "accurately
15 reflected his functioning" because he gave "very poor effort." Tr. 496. Similarly,
16 in the 2011 evaluation, Dr. Mabee related that Plaintiff's MMPI-2-RF profile as
17 invalid "due to excessive endorsement of symptoms." Tr. 499. Dr. Mabee
18 interpreted these results to reveal that Plaintiff has "a tendency to magnify his
19 difficulties and views his life in a particularly negative manner. Throughout his
20 evaluation, he provided very poor effort on all tasks. This appears to be a pattern
21 for him." Tr. 499. Dr. Mabee explained that Plaintiff's psychological impairments
22 would likely prevent him from maintaining employment:

23 Currently, Mr. Collins' mind is so preoccupied with his disabilities
24 and issues, he has little energy to devote to outside activities. He
25 reports difficulty with others and would need to work as
26 independently as possible. It is unlikely he would be able to obtain or
maintain employment in a traditional setting.

27 Tr. 498. Dr. Mabee diagnosed Plaintiff with undifferentiated somatoform disorder,
28 major depressive disorder, recurrent, moderate, paranoid features and borderline

1 intellectual functioning. Tr. 497.

2 In the check-the-box portion of the form, Dr. Mabee rated Plaintiff with
3 marked impairments in the abilities to: (1) understand, remember, and persist in
4 tasks by following complex instructions of three or more steps; (2) communicate
5 and perform effectively in a work setting with public contact; (3) maintain
6 appropriate behavior in a work setting. Tr. 498. After each check-the-box rating,
7 Dr. Mabee provided an explanation, that included, "poor attention, motivation, and
8 exhibited extremely poor effort on both visits to this clinic;" "[mental health] and
9 disordered personality"; and "will be inconsistent in attendance and poor in
10 performance; limited interpersonal skills." Tr. 498.

11 The ALJ gave several reasons for giving little weight to Dr. Mabee's
12 opinion: (1) the MMPI was invalid; (2) the opinion was largely based upon
13 Plaintiff's subjective complaints; (3) the opinion was provided on a check-the-box
14 form with "few objective findings"; (4) the evaluation was conducted in
15 conjunction with an application for state welfare assistance; and (5) Dr. Mabee was
16 not a treating source. Tr. 33.

17 The ALJ's first three reasons for giving little weight to Dr. Mabee's opinion
18 are not supported by the record. First, the MMPI test score was deemed invalid,
19 but Dr. Mabee's interpretation of those results were not that Plaintiff was
20 malingering as Defendant suggests, but instead, poor effort is a symptom of
21 Plaintiff's mental health impairment. Tr. 498-99. As a lay person, an ALJ is "not
22 at liberty to ignore medical evidence or substitute his own views for
23 uncontroverted medical opinion"; he is "simply not qualified to interpret raw
24 medical data in functional terms." *Nguyen v. Chater*, 172 F.3d 31, 35 (1st
25 Cir.1999).

26 The ALJ also rejected the opinion because it was largely based upon
27 Plaintiff's subjective complaints. The record does not support this assertion. Dr.
28 Mabee indicated he reviewed Plaintiff's record and test scores from his 2008

1 testing with the same clinic. Tr. 496. Additionally, Dr. Mabee performed a mental
2 status exam, administered the MMPI-2-RF, and observed several of Plaintiff's
3 symptoms (i.e., depression, poor attention and concentration/memory issues,
4 paranoia, preoccupation with physical health issues, poor effort when asked to
5 complete tasks) during the examination. Tr. 497. Dr. Mabee did not find Plaintiff
6 was malingering or deceptive.

7 In sum, Dr. Mabee performed two examinations of Plaintiff, several years
8 apart, and conducted extensive objective psychological testing. He provided an
9 explanation for each of his ratings. As a result, the record reveals Dr. Mabee did
10 not simply rely upon Plaintiff's subjective complaints in arriving at his opinions.
11 *See Regennitter v. Commissioner of SSA*, 166 F.3d 1294, 1300 (9th Cir. 1999)
12 (ALJ erred by discounting examining doctor opinion on basis that he accepted
13 patient's subjective complaints at "face value").

14 Next, the ALJ gave little weight to Dr. Mabee's opinion because it was
15 provided on a check-the-box form with "few objective findings." Tr. 33. An ALJ
16 may properly reject a treating physician's opinion that is conclusory and
17 unsupported by clinical findings, particularly check-the-box style forms. *See*
18 *Batson*, 359 F.3d at 1195 (holding that the ALJ did not err in giving minimal
19 evidentiary weight to the opinions of the plaintiff's treating physician where the
20 opinion was in the form of a checklist, did not have supportive objective evidence,
21 was contradicted by other statements and assessments of the plaintiff's medical
22 condition, and was based on the plaintiff's subjective descriptions of pain).

23 However, the record in this case does not support the ALJ's reasoning. In
24 completing the Psychological/psychiatric form, Dr. Mabee provided significantly
25 more information than just checked boxes. For example, Dr. Mabee provided
26 details about Plaintiff's records he reviewed, including previous test results. Tr.
27 496. He also provided a list of multiple symptoms he observed, and he described
28 how each symptom would affect Plaintiff's work activities. Tr. 497. Dr. Mabee

1 also provided a narrative of a typical day for Plaintiff, and he provided a personal
2 observation after each checked box assessment. Tr. 497-98. Finally, Dr. Mabee
3 provided "additional remarks" that explains why Plaintiff magnifies his difficulties
4 and views his life in a particularly negative manner. Tr. 499. Dr. Mabee also
5 provided eleven pages of Plaintiff's test results. Tr. 500-510. Because Dr. Mabee
6 provided more than checked boxes, and instead he provided interpretation and
7 opinion based upon his review of Plaintiff's previous test results and his
8 examination, the ALJ's reason for discounting Dr. Mabee's opinion is not
9 supported by the record.

10 The final two reasons the ALJ gave for discounting Dr. Mabee's opinion –
11 because the evaluation was conducted in conjunction with an application for state
12 welfare assistance and because Dr. Mabee was not a treating source – are contrary
13 to caselaw. First, it is well-established that the purpose for which medical reports
14 are obtained does not provide a legitimate basis for rejecting the reports. *Lester v.*
15 *Chater*, 81 F.3d 821, 832 (9th Cir. 1995). Second, an examining physician's
16 opinion is generally entitled to more weight than a non-examining physician's
17 opinion. The medical opinions of three types of medical sources are recognized in
18 social security cases: "(1) those who treat the claimant (treating physicians); (2)
19 those who examine but do not treat the claimant (examining physicians); and (3)
20 those who neither examine nor treat the claimant (nonexamining physicians)." *Lester*,
21 81 F.3d at 830. An examining physician's opinion may not be discounted
22 merely because the physician is not a treating physician. As a result, the ALJ erred
23 by discounting Dr. Mabee's opinion because it was obtained for the purpose of
24 welfare benefits and because he was an examining medical provider.

25 The vocational expert testified that when the limitations assessed by Dr.
26 Mabee are considered as part of Plaintiff's RFC, the Plaintiff would not be able to
27 perform any work. Tr. 73. As such, this case requires remand for the ALJ to
28 reconsider Dr. Mabee's opinion.

1 **B. Karen Bichler, ARNP**

2 Plaintiff contends that the ALJ relied upon improper factors in discounting
3 Ms. Bichler's opinions, including that Plaintiff was noncompliant with treatment
4 when examined, the fact the opinions were obtained in connection with an attempt
5 to qualify for state assistance, and her opinions were inconsistent with Plaintiff's
6 testimony. ECF No. 15 at 16-17.

7 On April 3, 2009, Karen D. Bichler, ARNP, signed a Physical Evaluation
8 form. Tr. 275-78. The form was left blank, and indicated "see chart note" on two
9 pages, and an April 3, 2009, Progress Note was appended to the form. Tr. 276-77;
10 279-82. In the Note, Ms. Bichler indicates Plaintiff presented for a GAU
11 evaluation, and he suffered from asthma/COPD complicated by chronic bronchitis
12 and recurrent pneumonia, with 3-4 episodes of pneumonia in the past year. Tr.
13 279. Ms. Bichler also noted Plaintiff had severe hyperlipidemia, complicated by
14 pancreatitis, for which he was hospitalized in November 2008. Tr. 279. The note
15 also indicates Plaintiff has Type II Diabetes, poorly controlled, and he has
16 hypertension. Tr. 279.

17 Ms. Bichler concluded that Plaintiff required an evaluation and stress test by
18 a cardiologist, and she recommended referral to a pulmonologist. She found that
19 his impairments posed moderate, or significant, interference with walking, lifting,
20 handling, carrying and seeing. Tr. 280. Ms. Bichler opined that Plaintiff's overall
21 work level is severely limited, and she noted he is unable to lift at least two
22 pounds, or unable to stand or walk. Tr. 280. Ms. Bichler added a comment: "With
23 the level of Mr. Collins' lipids, he needs a stress test, and it is likely that he will
24 end up having open heart surgery. I ordered some tests and recommended
25 specialist referrals, but Mr. Collins is unable to work." Tr. 281.

26 The ALJ rejected Ms. Bichler's opinion for three reasons: (1) "the opinion
27 was given when [Plaintiff] was non-compliant with treatment for pancreatitis and
28 was thus more impaired"; (2) "the evaluation was conducted in connection with

1 determining eligibility for state welfare assistance and thus the claimant had
2 incentive overstate his symptoms and complaints”; (3) the opinion was
3 “inconsistent with the claimant’s own testimony of his limitations” related to
4 lifting, standing and walking. Tr. 32. An impairment that can be controlled by
5 treatment or medication is not considered disabling. *Warre v. Comm’r of Soc. Sec.*
6 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006); 20 C.F.R. § 404.1530(a) (“In order to
7 get benefits, you must follow treatment prescribed by your physician if this
8 treatment can restore your ability to work.”).

9 Plaintiff asserts that the ALJ’s reliance upon Plaintiff’s noncompliance with
10 medication is immaterial, in light of Plaintiff’s continued critical pancreatitis
11 condition. ECF No.15 at 16. It is not clear from the report that Plaintiff was not
12 compliant with pancreatitis treatment. Ms. Bichler noted that Plaintiff has severe
13 hyperlipidemia, complicated by pancreatitis, and explained “many lipid lowering
14 agents aggravate pancreatitis.” Tr. 279. In other words, Plaintiff’s medications
15 for his hypertriglyceridemia can trigger an attack of pancreatitis. Additionally, as
16 Plaintiff points out, he was subsequently admitted to the hospital with repeated
17 episodes of acute pancreatitis. Tr. 324-31;² 311-19;³ 458-77.⁴ As a result, the
18
19

20 ²July 26-29, 2009, Plaintiff was admitted for pancreatitis. Doctors opined
21 the cause of the pancreatitis was a significant elevation of triglycerides. Tr. 324.
22 Chart notes also indicate that Plaintiff’s elevated blood sugars were “difficult to
23 control” and required “high doses” of insulin. Tr. 324.

24 ³November 18-20, 2009, Plaintiff was admitted with “acute pancreatitis.”
25 Tr. 311. Notes indicate Plaintiff was taking insulin as prescribed, but nevertheless,
26 his blood sugars were significantly elevated. Tr. 311.

27 ⁴March 3-6, 2011, Plaintiff was admitted with acute pancreatitis. Notes
28 indicate that contrary to Plaintiff’s belief that his diabetes caused the pancreatitis,

1 record does not support the ALJ's reasoning that Ms. Bichler's opinion should be
2 discounted because at the time she provided her opinion, Plaintiff was
3 noncompliant with medications.⁵

4 The ALJ also rejected Ms. Bichler's opinion because it was obtained in the
5 process of Plaintiff's application for state assistance. Tr. 32. As explained above,
6 the purpose for which a medical report is obtained does not provide a legitimate
7 basis for rejecting the report. *Lester*, 81 F.3d at 832 ("An examining doctor's
8 findings are entitled to no less weight when the examination is procured by the
9 claimant than when it is obtained by the Commissioner."); *see also Reddick*, 157
10 F.3d at 726 ("[I]n the absence of other evidence to undermine the credibility of a
11 medical report, the purpose for which the report was obtained does not provide a
12 legitimate basis for rejecting it.").

13 The ALJ's final reason for rejecting Ms. Bichler's evaluation was that her
14 opinion was "inconsistent with the claimant's own testimony of his limitations"
15 related to lifting, standing and walking. Tr. 32. Specifically, the ALJ cited Ms.
16 Bichler's contention that Plaintiff could not lift two pounds and was unable to
17 stand or walk, compared with Plaintiff's testimony that he could lift and carry a 12-
18 pack of soda and walk half a block. Tr. 32.

19 A contradiction between a medical opinion and Plaintiff's admitted activities
20 is a specific and legitimate reason for discounting a medical provider's opinion.
21 *See Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001) (noting that a treating

22 "previous episodes were due to hypertriglyceridemia," and a later note indicated
23 "ACE inhibitors can also cause this." Tr. 458; 462.

24 ⁵It is notable that in two instances, hospital records reveal that Plaintiff's
25 mental limitations may be a contributing factor in his inability to understand and
26 comply with instructions relating to medication compliance and management of his
27 condition. Tr. 311; 573.
28

1 physician's opinion may be discounted where it is inconsistent with a claimant's
2 level of functioning). In this case, Plaintiff testified that he is able to walk half a
3 block until he needs to rest, he can stand in line for no more than 15 minutes and
4 sit in chair for half an hour. Tr. 62. It is unreasonable to literally interpret Ms.
5 Bichler's assessment that Plaintiff was "unable to stand or walk" because the
6 records do not indicate Plaintiff was unable to walk into the examination room. It
7 is more likely that Ms. Bichler intended that Plaintiff would be unable to walk or
8 sit long enough to complete an eight-hour workday.

9 Also, when asked how much he could "lift and carry," Plaintiff responded
10 "[a]12-pack of soda and that's about it." Tr. 62. The ALJ cited this fact as
11 contrary to Ms. Bichler's opinion that Plaintiff can carry no more than two pounds.
12 Tr. 32. Plaintiff argues that Ms. Bichler's opinion is reasonably interpreted as
13 indicating Plaintiff was able to only lift two pounds consistently, throughout the
14 day. ECF No. 15 at 17. Plaintiff also testified that he can purchase groceries and
15 put them in his car, he has to have someone help him carry them up to his
16 apartment. Tr. 60.

17 Because this case must be remanded, the ALJ may request clarification,
18 further develop the record on this issue, or reconsider Ms. Bichler's opinion and
19 provide a new analysis. Generally in Social Security cases, the ALJ has a special
20 duty to "develop the record fully and fairly and to ensure that the claimant's
21 interests are considered, even when the claimant is represented by counsel."
22 *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001). An ALJ's duty to further
23 develop the record is triggered when ambiguous evidence exists, or when the
24 record is inadequate to allow for the proper evaluation of the evidence. *Id.* at 459-
25 460; *accord Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005) (no duty
26 exists to re-contact doctors if the evidence in the record is adequate to make
27 determination.).

28 ///

CONCLUSION

Having reviewed the record and the ALJ's findings, the court concludes the ALJ's decision is not supported by substantial evidence and is based on legal error. On remand, the ALJ should reconsider the medical opinions and if necessary, determine a new RFC, and conduct a new step four and step five assessment. Accordingly,

IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is **GRANTED** and remanded for additional proceedings.

2. Defendant's Motion for Summary Judgment, **ECF No. 21**, is **DENIED**.

3. An application for attorney fees may be filed by separate motion.

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and the file shall be CLOSED.

DATED February 10, 2014.



A handwritten signature in black ink, appearing to read "M", is written over a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE